IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No.437 of 2001.

Judgment reserved on 28.12.2006.

Date of decision 4.1.2007

Karam Chand and others ….. Petitioners.

Versus

Director of Consolidation and others ….Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioners	**Mr. Ashwani Kumar Sharma, Advocate.**
For Respondent No. 1	**Mr. Rajan Dewan, Addl. AG.**
For respondents 2 to 5:	**Mr. Shrawan Dogra, Advocate.**

Dev Darshan Sud, J.

The writ petition has been filed challenging the order of the Director of Consolidation passed in Case No. 191/99 on 7.12.2000. The respondents had instituted a revision petition under Section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 where a grievance had been made regarding wrong allotment

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

of the land to the parties during consolidation proceedings. By his order dated 7.12.2000 (Annexure P-1), the Director of Consolidation has allowed the revision petition filed by the respondents.

Learned counsel for the petitioner has assailed the judgment on a number of grounds. For the purposes of the present petition, only two grounds are being considered, namely that respondent No. 1 had declined adequate time to the petitioners to engage a counsel to represent their case, despite such a request having been made. The other ground was whether the Director had jurisdiction to adjudicate the matter after the lapse of a long period of time.

I have heard the learned counsel for the parties.

The factum regarding a request having been made by the petitioners for an adjournment for the purpose of engaging a counsel in order to effectively represent their case has been pleaded in the writ petition. In the reply respondent No. 1 Director of Consolidation has admitted that such a request was made but not considered proper since all the parties were present in person, and the prayer for adjournment was found to be baseless and a method to prolong the litigation. On the question of long delay for filing the petition under Section 54, nothing has

been stated in the reply to the petition. It is the admitted case of the parties that no appeal(s) was preferred and only proceedings under Section 54 were initiated.

This Court is not expressing any opinion on the respective contentions of the parties, since it is felt that respondent No. 1 was not right in deciding the matter in hot haste. The records of the case were also called to ascertain whether such a request was made and whether the records on the basis of which the decision was taken were put up before respondent No. 1. It is undisputed that respondent No. 1 is a statutory authority discharging adjudicatory duties. From the records, it was found that summons for appearance had been received by the son of the petitioner on 27.11.2000. The matter was taken up thereafter on 7.12.2000. According to learned counsel for the petitioners, it was not possible that during such short period, counsel could be instructed or the record inspected more-so when it was not in the office of respondent No. 1. The proceedings regarding allotment were being taken after a long period of more than 10 years and reasonable time was required. I find that the request of the petitioners was justified in these circumstances. If a short adjournment was prayed for, there was no question of prolonging the

proceedings as the main claim itself related to proceedings which had been initiated and concluded more than 10-11 years back. The Director of Consolidation was wrong in ignoring this plea. Although denial of assistance of counsel does not *perse* constitute violation of the principles of natural justice, nevertheless, where the matter is complex, such right has been read into the principles of natural justice. In the present case, I find that the record seems to have been produced on the very day when the matter was taken up for proceedings. Again, no opinion is being expressed as the Attendance Register maintained by respondent No. 1 only showed the presence of the *Patwari* and nothing else. Even assuming that the records had been brought on that day, surely, the petitioners were entitled to inspect the same in order to effectively represent their case. It was not expected that the petitioners should be prepared on all facets of the case after a period of 10-11 years after the matter had been concluded. Considered in the totality of the circumstances, I am of the considered view that respondent No. 1 was not correct in granting a short adjournment to the petitioners in order to enable them to prepare their case. The request has been turned down in a mechanical manner and for reasons which are not sustainable. It is

not understood as to how litigation could be prolonged by short adjournment when the main matter itself had been instituted after a period of about 10 years.

On the other grounds urged in the petition, no opinion is being expressed at this stage as the matter is being remanded to respondent No. 1 for decision afresh in accordance with law. It shall be open to the parties to urge such grounds as permissible to them.

The matter is remanded to the Director of Consolidation with the direction that the case will be re-admitted and the parties will be given an adequate opportunity to represent their respective case(s). All grounds urged by the parties will be considered by respondent No. 1. Needless to add that the decision will be well reasoned one. Considering the fact that petition had been filed in the year 1999, respondent No. 1 is directed to dispose of the same within a period of six months from the date when the order is received. Parties will be given notice of appearance immediately on the receipt of this order. There shall be no order as to costs.

January 4, 2006. **(Dev Darshan Sud)**
PC. **Judge.**